

Title 7: AGRICULTURE AND ANIMALS

Chapter 601: MILK AND MILK PRODUCTS

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Maine Revised Statutes
Title 7: AGRICULTURE AND ANIMALS
Chapter 601: MILK AND MILK PRODUCTS

§2900. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1999, c. 679, Pt. A, §1 (NEW).]

1. Aseptically processed and packaged. "Aseptically processed and packaged" means hermetically sealed in a container and thermally processed to render the product free of microorganisms capable of reproducing in the product under normal nonrefrigeration conditions of storage and distribution.

[1999, c. 679, Pt. A, §1 (NEW) .]

2. Bulk milk hauler and sampler. "Bulk milk hauler and sampler" means a person who collects samples and transports raw milk from a farm or raw milk products to or from a farm, milk plant, receiving station or transfer station and has in that person's possession a permit from any state to sample such products.

[1999, c. 679, Pt. A, §1 (NEW) .]

3. Commissioner. "Commissioner" means the Commissioner of Agriculture, Conservation and Forestry or the commissioner's duly authorized agent.

[1999, c. 679, Pt. A, §1 (NEW); 2011, c. 657, Pt. W, §6 (REV) .]

4. Dairy or dairy farm. "Dairy or dairy farm" means any place or premises where one or more cows, goats or sheep are kept and from which milk or milk products are provided, sold or offered for sale.

[1999, c. 679, Pt. A, §1 (NEW) .]

5. Farm cheese.

[2005, c. 270, §1 (RP) .]

6. Heat treated. "Heat treated" or "heat-treated" means processed by heating every particle of milk to a temperature of 145 degrees Fahrenheit for at least 30 minutes.

[2005, c. 270, §2 (AMD) .]

7. Milk. "Milk" means the lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy cows, goats or sheep.

[1999, c. 679, Pt. A, §1 (NEW) .]

8. Milk distributor. "Milk distributor" means any person who offers for sale or sells to another person any milk or milk products in their final form.

[1999, c. 679, Pt. A, §1 (NEW) .]

9. Milk plant. "Milk plant" means any place, premises or establishment where milk or milk products are collected, handled, processed, stored, pasteurized, aseptically processed, bottled or otherwise prepared for distribution.

[1999, c. 679, Pt. A, §1 (NEW) .]

10. Milk producer. "Milk producer" means any person who operates a dairy farm and provides, sells or offers milk or milk products for sale.

[1999, c. 679, Pt. A, §1 (NEW) .]

11. Milk products. "Milk products" means cream, light cream, light whipping cream, heavy cream, heavy whipping cream, whipped cream, whipped light cream, sour cream, acidified sour cream, cultured sour cream, milk, butter, evaporated milk, sweetened condensed milk, nonfat dry milk solids, half-and-half, sour half-and-half, acidified sour half-and-half, cultured sour half-and-half, concentrated milk and milk products, skim milk, reconstituted or recombined milk and milk products, low-fat milk, light milk, reduced fat milk, homogenized milk, frozen milk concentrate, eggnog, cultured milk, buttermilk, yogurt, cottage cheese, creamed cottage cheese, acidified milk, low-sodium milk, lactose-reduced milk, aseptically processed and packaged milk and milk products, milk with added safe and suitable microbial organisms and any other milk product, frozen dairy dessert or frozen dairy dessert mix, cheese or other product designated as a milk product by the commissioner that is made by the addition or subtraction of milkfat or addition of safe and suitable optional ingredients for protein, vitamin or mineral fortification.

[1999, c. 679, Pt. A, §1 (NEW) .]

12. Milk transport tank. "Milk transport tank" means a vehicle, including the truck and tank, used by a bulk milk hauler and sampler or milk tank vehicle driver to transport bulk shipments of milk from a milk plant, receiving station or transfer station to another milk plant, receiving station or transfer station.

[2013, c. 381, Pt. B, §1 (AMD) .]

13. Milk transportation company. "Milk transportation company" means a company responsible for a milk transport tank.

[1999, c. 679, Pt. A, §1 (NEW) .]

14. Not pasteurized. "Not pasteurized" means any milk or milk product that has not been subjected to the temperature and time requirements of pasteurization using equipment designed for pasteurization or has not been aseptically processed and packaged.

[1999, c. 679, Pt. A, §1 (NEW) .]

15. Pasteurization or pasteurized. "Pasteurization" or "pasteurized" or a similar term means the process of heating every particle of milk or milk product in properly designed and operated equipment to the temperature specified and for the time period specified in any rule adopted pursuant to section 2910 or any pasteurization process that has been recognized by the United States Food and Drug Administration to be equally effective and that is approved by the commissioner.

[1999, c. 679, Pt. A, §1 (NEW) .]

16. Person. "Person" means any individual, plant operator, partnership, corporation, company, firm, trustee, association or institution.

[1999, c. 679, Pt. A, §1 (NEW) .]

17. Receiving station. "Receiving station" means any place, premise or establishment where raw milk is received, collected, handled, stored or cooled and prepared for further transporting.

[1999, c. 679, Pt. A, §1 (NEW) .]

18. Transfer station. "Transfer station" means any place, premises or establishment where milk or milk products are transferred directly from one milk transport tank to another.

[1999, c. 679, Pt. A, §1 (NEW) .]

SECTION HISTORY

1999, c. 679, §A1 (NEW). 2005, c. 270, §§1,2 (AMD). 2011, c. 657, Pt. W, §6 (REV). 2013, c. 381, Pt. B, §1 (AMD).

§2901. DEFINITIONS

(REPEALED)

SECTION HISTORY

1969, c. 41, §1 (AMD). 1971, c. 164, §§1-12 (AMD). 1977, c. 31, (AMD). 1979, c. 541, §§A72,A73 (AMD). 1979, c. 672, §§A30-33 (AMD). 1981, c. 315, §§1-6 (AMD). 1987, c. 700, §1 (AMD). 1987, c. 874, §1 (AMD). 1997, c. 639, §1 (AMD). 1999, c. 362, §§2-6 (AMD). 1999, c. 418, §1 (AMD). 1999, c. 679, §A2 (RP).

§2901-A. STANDARDS AND LABELING

Notwithstanding any other requirements of this chapter, milk and milk products, defined in accordance with standards then in effect that have been adopted by the United States Government and labeled in conformity with labeling requirements then in effect that have been adopted by the United States Government, are considered to conform with the definitions and labeling requirements set forth in this chapter; except that containers of milk and cream packaged in Maine must also bear the name and address of the Maine licensed milk distributor and sufficient information to identify the milk plant where packaged. [1999, c. 679, Pt. A, §3 (AMD).]

SECTION HISTORY

1973, c. 67, (NEW). 1999, c. 362, §7 (AMD). 1999, c. 679, §A3 (AMD).

§2901-B. TRADEMARK FOR MILK AND MILK PRODUCTS

The department shall adopt rules permitting the use of the certification trademark provided for in section 443-B on milk or milk products. The initial rules must include limitations relating to the use of milk from cows that have been treated with recombinant bovine somatotropin, referred to in this section as "rbST." The rules must include a requirement that the department receive written consent from producers to draw blood from their milking herd, examine historical milk production records, inspect medicine storage places and perform other inspections reasonably necessary to verify compliance with the trademark criteria. [2005, c. 382, Pt. F, §1 (AMD).]

1. Notice by producer. If the criteria for use of the certification trademark include absence of the use of rbST, a milk producer in this State who sells milk to a milk plant that uses the trademark must notify that milk plant before using rbST within the milking herd of the producer's dairy farm. Notification to the milk plant

must be made at least 45 days before using rbST. Notification must be made by certified mail and sent to the milk plant's employee responsible for milk procurement at the plant location where the milk is processed. For purposes of this section, "possession of rbST" means use.

[1999, c. 679, Pt. A, §4 (AMD) .]

2. Failure to provide notice. If a Maine milk producer fails to give the milk plant the notice required in subsection 1, the milk plant is not required to comply with the notice requirements of section 2903-A before refusing to continue to purchase milk under any contract with that milk producer.

[1999, c. 679, Pt. A, §4 (AMD) .]

SECTION HISTORY

1993, c. 663, §1 (NEW). 1999, c. 679, §A4 (AMD). 2005, c. 382, §F1 (AMD).

§2901-C. LICENSES AND PERMITS

A person required to obtain a permit or license under this section, section 2902-A or rules adopted under section 2910 or pursuant to former section 2902 may not sell, transport or transfer milk or milk products prior to obtaining the appropriate license or permit. [1999, c. 679, Pt. A, §5 (NEW) .]

1. Milk distributor license. A milk distributor shall obtain a license from the commissioner and shall renew that license annually. The license fee is based on the annual volume of milk or milk products sold or distributed in the State. The annual fee may not be lower than \$25 or exceed \$300. The commissioner shall deposit all money received from milk distributor license fees into the General Fund.

[1999, c. 679, Pt. A, §5 (NEW) .]

2. Bulk milk hauler and sampler permit. A bulk milk hauler and sampler who is based in this State shall obtain a permit from the commissioner and shall renew that permit annually. For the purposes of this section, "based in this State" means a bulk milk hauler and sampler who does not have a permit from another state to sample raw milk or raw milk products.

[1999, c. 679, Pt. A, §5 (NEW) .]

3. Receiving station permit. A person who owns or operates a receiving station shall obtain a permit for that receiving station from the commissioner and shall renew that permit annually.

[1999, c. 679, Pt. A, §5 (NEW) .]

4. Transfer station permit. A person who owns or operates a transfer station shall obtain a permit for that transfer station from the commissioner and shall renew that permit annually.

[1999, c. 679, Pt. A, §5 (NEW) .]

5. Milk transportation company permit. A person who owns or operates a milk transportation company shall obtain a permit for the transportation company from the commissioner and shall renew that permit annually.

[1999, c. 679, Pt. A, §5 (NEW) .]

SECTION HISTORY

1999, c. 679, §A5 (NEW).

§2902. LICENSING FEES

(REPEALED)

SECTION HISTORY

1971, c. 164, §13 (AMD). 1977, c. 694, §§137,138 (AMD). 1979, c. 672, §§A34-36 (AMD). 1981, c. 315, §§7-9 (AMD). 1981, c. 574, §1 (AMD). 1985, c. 751, §§1-3 (AMD). 1989, c. 888, §§3,4 (AMD). 1999, c. 362, §8 (RPR). 1999, c. 679, §A6 (RP).

§2902-A. OPERATING PERMITS

1. Sale prohibited. Following the adoption of and in accordance with rules established according to this section, no operator of a dairy farm may sell any milk to a milk distributor unless the operator holds a valid operating permit for the farm issued by the commissioner.

[1999, c. 679, Pt. A, §7 (AMD) .]

2. Issuance of operating permits. The commissioner, in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, shall adopt rules for the issuance of operating permits. These rules must establish permitting procedures and standards for permit issuance. In establishing these procedures and standards, the commissioner shall seek consistency with applicable federal milk regulations and guidelines and with the provisions of agreements among states relating to the interstate shipment of milk. These permits are not transferable with respect to persons or locations or both.

[1999, c. 679, Pt. A, §7 (AMD) .]

3. Permit granted; requirements; suspension. A permit must be granted upon the express condition that the permittee at all times conducts the operation and maintains the facilities in accordance with the requirements of state law and any rules adopted under this chapter. Any violation that results in a health or safety hazard may lead to suspension of a permit in accordance with Title 5, chapter 375, section 10004 for a period of up to 30 days. A suspension or revocation of a permit for longer than 30 days, or a refusal to renew a permit, must be in accordance with Title 5, chapter 375, subchapter V.

[1999, c. 1, §4 (COR) .]

4. Hearing on suspension of permit. Upon receiving a written request from a person whose permit has been suspended, or who has been given a notice of intent to suspend by the commissioner, the commissioner shall within 72 hours conduct a hearing to ascertain the facts involved in the case and, based upon the evidence presented at that hearing, shall affirm, modify or rescind the suspension or notification of intent to suspend.

[1987, c. 700, §2 (NEW) .]

5. Exemption. An operator of a dairy farm located outside this State who holds a similar operating permit for that farm from a regulatory agency in another state may be exempted from this permit requirement by the commissioner.

[1999, c. 679, Pt. A, §7 (AMD) .]

SECTION HISTORY

1987, c. 700, §2 (NEW). RR 1999, c. 1, §4 (COR). 1999, c. 679, §A7 (AMD).

§2902-B. SALE OF UNPASTEURIZED MILK AND MILK PRODUCTS

1. Sale of unpasteurized milk or milk product. A person may not sell unpasteurized milk or a product made from unpasteurized milk, including heat-treated cheese, unless the label on that product contains the words "not pasteurized."

[2005, c. 270, §3 (AMD) .]

2. Sale of unpasteurized milk or milk product at eating establishment. Except as provided in subsection 5, a person may not sell unpasteurized milk or a product made from unpasteurized milk at an eating establishment as defined in Title 22, section 2491, subsection 7.

[2009, c. 652, Pt. B, §1 (AMD) .]

3. Exception. This section does not apply to cheese that has been aged at a temperature above 35 degrees Fahrenheit for at least 60 days prior to sale.

[2005, c. 270, §3 (AMD) .]

4. Testing of unpasteurized milk products. The commissioner shall establish a process by rule for submitting samples of unpasteurized milk products to an independent laboratory for testing when:

A. The milk laboratory operated by the department has tested unpasteurized milk products and determined that they do not meet the standards for unpasteurized milk products established by rules adopted pursuant to section 2910; and [2005, c. 172, §1 (NEW) .]

B. The person operating the milk plant that processed the milk products has requested independent testing. [2005, c. 172, §1 (NEW) .]

The commissioner may require the person requesting the independent testing under paragraph B to pay for that testing. Any restrictions on the sale of unpasteurized milk products pending test results and after receipt of test results must be established by rule. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. For the purposes of this subsection, "independent laboratory" means a laboratory that is operated by a private entity or a public entity other than the department.

[2005, c. 172, §1 (NEW) .]

4. (REALLOCATED TO T. 7, §2902-B, sub-§5) Sale of heat-treated cheese at eating establishment.

[2005, c. 270, §3 (NEW); 2005, c. 683, Pt. A, §12 (RAL) .]

5. (REALLOCATED FROM T. 7, §2902-B, sub-§4) Sale of heat-treated cheese at eating establishment. Notwithstanding subsection 2, heat-treated cheese may be offered for consumption at an eating establishment as defined in Title 22, section 2491, subsection 7 provided the menu identifies items on the menu that contain or are made with heat-treated cheese and provides notice that heat-treated cheese is not pasteurized using the words "not pasteurized" on the menu.

[2005, c. 683, Pt. A, §12 (RAL) .]

SECTION HISTORY

1999, c. 418, §2 (NEW). 2003, c. 452, §X2 (AFF). 2003, c. 452, §B18 (RPR). 2005, c. 172, §1 (AMD). 2005, c. 270, §3 (AMD). 2005, c. 683, §A12 (AMD). 2009, c. 652, Pt. B, §1 (AMD).

§2903. RESTRICTIONS ON SALES

(REPEALED)

SECTION HISTORY

1971, c. 99, §2 (AMD). 1971, c. 164, §§14-16 (AMD). 1979, c. 672, §§A37,38 (AMD). 1981, c. 315, §§10,11 (AMD). 1983, c. 348, §§1,2 (AMD). 1985, c. 32, (AMD). 1999, c. 362, §9 (RP).

§2903-A. REFUSAL TO PURCHASE

1. Notice of refusal. A milk plant owner or operator who has a verbal or written contract with a milk producer for the purchase of milk may not refuse to continue to purchase milk under the contract without first giving notice to the producer in accordance with this section. The milk plant owner or operator shall give written notice of intent to refuse to purchase to the producer and to the commissioner. The notice must state the date upon which the refusal will become effective.

A. Except as provided in paragraph B, the refusal does not become effective until 30 days following the milk plant owner or operator's notice of intent to refuse to purchase milk from the producer. [1999, c. 679, Pt. A, §8 (AMD).]

B. If a milk plant owner or operator's refusal to continue to purchase milk is based on failure of the producer's milk to meet the milk plant owner or operator's quality criteria or the Interstate Milk Shipments Conference Standards, whichever is applicable, the refusal may become effective on less than 30 days' notice. Upon issuance of notice of intent to refuse purchase because of failure to meet the criteria or standards, the milk plant owner or operator shall cause a sample of the refused milk to be taken immediately and transferred to the commissioner for testing in the state central laboratory. Upon receipt of the test results that the sample does not meet the milk plant owner or operator's quality criteria or the Interstate Milk Shipments Conference Standards, whichever is applicable, refusal to continue to purchase becomes effective immediately. Notice must be given to the producer by the milk plant owner or operator immediately upon the milk plant owner or operator's receipt of the test results. The state central laboratory shall mail the results of the test to the milk plant owner or operator and milk producer. [1999, c. 679, Pt. A, §8 (AMD).]

[1999, c. 679, Pt. A, §8 (AMD) .]

2. Challenge of refusal; adjudicatory hearing. If the producer or the milk plant owner or operator desires to question the refusal to purchase or the test given under subsection 1, paragraph B, either may do so within 10 days after receipt of the notice from the milk plant owner or operator of the test results by requesting, in writing, that the commissioner conduct an adjudicatory hearing pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375. If a request for hearing is made by the milk plant owner or operator, refusal to purchase does not become effective until the hearing is held and a decision upholding the milk plant owner or operator's refusal has been issued by the commissioner. The decision of the commissioner as to the reasonableness of the milk plant owner or operator's refusal to purchase is considered final agency action for purposes of the Maine Administrative Procedure Act.

[1999, c. 679, Pt. A, §8 (AMD) .]

SECTION HISTORY

1981, c. 574, §2 (NEW). 1999, c. 679, §A8 (AMD).

§2903-B. TESTING OF SAMPLES FOR RESOLVING DISPUTED TEST RESULTS

The commissioner shall develop a process for obtaining and testing a sample of milk when a milk producer disputes the result of a test or a component analysis performed by an employee of a milk plant that is used to determine acceptance of milk by the milk plant or payment to the milk producer. [1999, c. 618, §1 (NEW).]

SECTION HISTORY

1999, c. 618, §1 (NEW).

§2904. RULES AND REGULATIONS

(REPEALED)

SECTION HISTORY

1969, c. 41, §2 (AMD). 1977, c. 694, §139 (AMD). 1999, c. 362, §10 (RP).

§2904-A. FARM CHEESE

(REPEALED)

SECTION HISTORY

1997, c. 639, §2 (NEW). 1999, c. 418, §3 (AMD). 2005, c. 270, §4 (RP).

§2905. SALES TO INSTITUTIONS

(REPEALED)

SECTION HISTORY

1999, c. 362, §11 (RP).

§2906. CIVIL SUITS

The district attorney for the county in which any violation of sections 2901-A to 2903-B has occurred shall, if requested, assist the commissioner in suits arising under those sections. [2005, c. 270, §5 (AMD).]

SECTION HISTORY

1977, c. 696, §98 (RPR). 1999, c. 362, §12 (AMD). 1999, c. 679, §A9 (AMD). 2005, c. 270, §5 (AMD).

§2907. JURISDICTION

The District Court and the Superior Court have concurrent jurisdiction in cases arising under sections 2901-A to 2903-B. [2005, c. 270, §6 (AMD).]

SECTION HISTORY

1999, c. 362, §13 (AMD). 1999, c. 679, §A10 (AMD). 2005, c. 270, §6 (AMD).

§2908. VIOLATIONS

(REPEALED)

SECTION HISTORY

1969, c. 41, §3 (AMD). 1977, c. 696, §99 (RPR). 1985, c. 751, §4 (AMD). 1991, c. 725, §1 (AMD). 1999, c. 362, §14 (AMD). 1999, c. 679, §A11 (AMD). 2003, c. 452, §X2 (AFF). 2003, c. 452, §B19 (RP).

§2908-A. VIOLATIONS

1. Violation. A firm, person, corporation or society may not sell milk or milk products in the State without the license or permits provided in sections 2901-C and 2902-A, violate sections 2901-A to 2903-B or neglect, fail or refuse to comply with those sections and the rules, regulations and standards of identity and quality issued pursuant to section 2910.

[2005, c. 270, §7 (AMD) .]

2. Penalty. The following penalties apply to violations of this section.

A. A person who violates subsection 1 commits a civil violation for which a fine of not less than \$250 and not more than \$500 may be adjudged. [2003, c. 452, Pt. B, §20 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. A person who violates subsection 1 after having previously violated subsection 1 commits a civil violation for which a fine of not less than \$500 and not more than \$1,000 may be adjudged. [2003, c. 452, Pt. B, §20 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

[2003, c. 452, Pt. B, §20 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

SECTION HISTORY

2003, c. 452, §B20 (NEW). 2003, c. 452, §X2 (AFF). 2005, c. 270, §7 (AMD).

§2909. INSPECTION

The commissioner, or a duly authorized agent of the commissioner, may perform inspections as authorized by written consents obtained pursuant to section 2901-B. [1993, c. 663, §2 (NEW).]

SECTION HISTORY

1993, c. 663, §2 (NEW).

§2910. STANDARDS FOR MILK AND MILK PRODUCTS

The commissioner, in a manner consistent with the Maine Administrative Procedure Act, shall establish standards by rule for the inspection and examination, licensing, permitting, testing, labeling and sanitation of milk and milk product production and distribution. [1999, c. 362, §15 (NEW).]

The standards must be consistent with the requirements of the official standards, known as the Pasteurized Milk Ordinance, as issued by the Secretary of the United States Department of Health and Human Services, Food and Drug Administration, except that the standards may not prohibit the sale of unpasteurized milk and milk products in the State. [1999, c. 362, §15 (NEW).]

Rules adopted pursuant to this section are major substantive rules as defined in Title 5, chapter 375, subchapter II-A, except that amendments to the rules to maintain consistency with the official standards known as the Pasteurized Milk Ordinance, as issued by the Secretary of the United States Department of Health and Human Services, Food and Drug Administration, are routine technical rules as defined in Title 5, chapter 375, subchapter II-A. Amendments to the rules may not prohibit the sale of unpasteurized milk or milk products in the State. [1999, c. 679, Pt. A, §12 (AMD).]

SECTION HISTORY

1999, c. 362, §15 (NEW). 1999, c. 679, §A12 (AMD).

§2910-A. INJUNCTIONS BY COMMISSIONER

In addition to any other remedy for the enforcement of sections 2901-C to 2903-B or a rule, order or decision by the commissioner adopted or issued pursuant to this chapter, the commissioner is authorized to apply to the Superior Court for a preliminary or permanent injunction restraining any person from violating any provision of sections 2901-C to 2903-B or any rule, order or decision of the commissioner adopted or issued pursuant to this chapter. The Superior Court has jurisdiction upon hearing and for good cause shown to grant a preliminary or permanent injunction. In case of violation of an injunction issued under this section, the court may cite the person for contempt of court. The existence of either civil or criminal remedies is not a defense in this proceeding. The commissioner is not required to give or post a bond when making an application for an injunction under this section. [2005, c. 270, §8 (AMD).]

SECTION HISTORY

1999, c. 679, §A13 (NEW). 2005, c. 270, §8 (AMD).

§2910-B. DAIRY IMPROVEMENT FUND

The commissioner shall administer the Dairy Improvement Fund established under Title 10, section 1023-P in accordance with this section and Title 10, section 1023-P. All money received by the fund from any source, including revenue distributed under Title 8, section 1036, subsection 2-A, paragraph M, must be deposited with the Finance Authority of Maine and credited to the fund. Money credited to the fund must be used to provide loans to assist dairy farmers in making capital improvements to maintain and enhance the viability of their farms and to pay the administrative costs of processing loan applications and servicing and administering the fund and loans made from the fund. Repayment of these loans and interest on the loans must be credited to the fund to be available for the same purposes. [2011, c. 625, §1 (NEW).]

The commissioner shall adopt rules to implement this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2011, c. 625, §1 (NEW).]

SECTION HISTORY

2011, c. 625, §1 (NEW).

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